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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1970

NO. 661

CHEVRON OIL COMPANY,

Petitioner

versus

GAINES TED HUSON,

Respondent.

BRIEF ON THE MERITS BY PETITIONER
CHEVRON OIL COMPANY ON WRIT OF
CERTIORARI TO THE UNITED STATES COURT
OF APPEALS FOR THE FIFTH CIRCUIT

TO THE HONORABLE THE CHIEF JUSTICE AND THE
ASSOCIATE JUSTICES OF THE SUPREME COURT OF
THE UNITED STATES:

MAY IT PLEASE THE COURT:

OPINIONS BELOW

The judgment of the United States Dis-
trict Court is printed in the Appendix

(A. 152) and does not appear in official or unofficial reports; and, the opinion by the United States Court of Appeals for the Fifth Circuit is also printed in the Appendix (A. 194) and is cited as Gaines Ted Huson, Plaintiff versus Chevron Oil Company, Defendant versus Otis Engineering Corporation, et al., Third-Party Defendants, 430 F. 2d 27 (1970).

JURISDICTION

Jurisdiction to review this case upon a writ of certiorari is authorized and created by U.S.C.A. Title 28, Section 1254(1). See: General Talking Pictures Corporation versus Western Electric Company, et al., 304 U.S. 175 (1937); The Tungus versus Skovgaard, 358 U.S. 588 (1959); and, Goett versus Union Carbide Corp., 361 U.S. 340 (1960).

The opinion of the United States Court of Appeals for the Fifth Circuit was rendered July 14, 1970. A petition for rehearing was filed by petitioner on July 27, 1970 and denied August 10, 1970, without a further opinion. A motion was made to that Court for stay of mandate pending the filing of the petition for a writ of certiorari and was granted on August 25, 1970. The petition for a writ of certiorari was filed with this Court on September 8, 1970 and granted on May 3, 1971. An enlargement of time within which to file the appendix record and petitioner's brief was granted on May 13, 1971, and the time therefor extended to and including July 19, 1971.

STATUTE INVOLVED

The pertinent provisions of the Outer Continental Shelf Lands Act, U.S.C.A. Title 43, Sections 1331 et seq., and LSA-C.C.

articles 2315 and 3536, are as follows:

U.S.C.A. Title 43, Section 1332

"(a) It is declared to be the policy of the United States that the subsoil and seabed of the outer Continental Shelf appertain to the United States and are subject to its jurisdiction, control, and power of disposition as provided in this subchapter."

U.S.C.A. Title 43, Section 1333

"(a) Constitution and United States laws; laws of adjacent States; publication of projected State lines; restriction on State taxation and jurisdiction.

"(1) The Constitution and laws and civil and political jurisdiction of the United States are extended to the subsoil and seabed of the outer Continental Shelf and to all artificial islands and fixed structures which may be erected thereon for the purpose of exploring for, developing, removing, and transporting resources therefrom, to the same extent as if the outer Continental Shelf were an area of exclusive Federal jurisdiction located within a State: Provided, however, that mineral leases on the outer Continental Shelf shall be maintained or issued only under the provisions of this subchapter.

"(2) To the extent that they are applicable and not inconsistent with this subchapter or with other Federal laws and regulations of the Secretary now in effect or hereafter adopted, the civil and criminal laws of each adjacent State as of the effective date of this subchapter are declared to be the law of the United States for that portion of the subsoil and seabed of the outer Continental Shelf, and artificial islands and fixed structures erected thereon, which would be within the area of the State if its boundaries were extended seaward to the outer margin of the outer Continental Shelf, and the President shall determine and publish in the Federal Register such projected lines extending seaward and defining each such area. All of such applicable laws shall be administered and enforced by the appropriate officers and courts of the United States. State taxation laws shall not apply to the outer Continental Shelf.

"(3) The provisions of this section for adoption of State law as the law of the United States shall never be interpreted as a basis for claiming any interest in or jurisdiction on behalf of any State for any purpose over the seabed and subsoil of the outer Continental Shelf, or the property and natural resources thereof or the revenues therefrom."

LSA-C.C. article 2315

Every act whatever of man that causes damage to another obliges him by whose fault it happened to repair it.

The right to recover damages to property caused by an offense or quasi offense is a property right which, on the death of the obligee, is inherited by his legal, instituted, or irregular heirs, subject to the community rights of the surviving spouse.

The right to recover all other damages caused by an offense or quasi offense, if the injured person dies, shall survive for a period of one year from the death of the deceased in favor of: (1) the surviving spouse and child or children of the deceased, or either such spouse or such child or children; (2) the surviving father and mother of the deceased, or either of them, if he left no spouse or child surviving, and (3) the surviving brothers and sisters of the deceased, or any of them, if he left no spouse, child, or parent surviving. The survivors in whose favor this right of action survives may also recover the damages which they sustained through the wrongful death of the deceased. A right to recover damages under the provisions of this paragraph is a property right which, on the death of the survivor in whose favor the right of action survived, is inherited by his legal, instituted, or irregular heirs,

whether suit has been instituted thereon by the survivor or not.

As used in this article, the words "child", "brother", "sister", "father", and "mother" include a child, brother, sister, father, and mother, by adoption, respectively.

LSA-C.C. article 3536

The following actions are also prescribed by one year:

That for injurious words, whether verbal or written, and that for damages caused by animals; or resulting from offenses or quasi offenses.

That which a possessor may institute, to have himself maintained or restored to his possession, when he has been disturbed or evicted.

That for the delivery of merchandise or other effects, shipped on board any kind of vessels.

That for damage sustained by merchandise on board ships, or which may have happened by ships running foul of each other.

QUESTIONS PRESENTED

1. Whether the laws of the State of Louisiana (LSA-C.C. articles 2315 and 3536) are made applicable under the provisions of the Outer Continental Shelf Lands Act, U.S. C.A. Title 43, Sections 1331 et seq., to an accident occurring on a fixed and immobile artificial island drilling structure

located off the Louisiana coast, resulting in personal injury and damages, but not death, to an individual employed thereon.

2. If the answer to the foregoing question No. 1 is in the affirmative, whether LSA-C.C. article 3536 allowed respondent only one year, calculated from the date of the accident, within which to have filed his complaint for damages under LSA-C.C. article 2315.

3. If the answer to the foregoing question No. 1 is in the negative, whether the admiralty and general maritime law applies to an accident occurring on a fixed and immobile artificial island drilling structure located off the Louisiana coast, resulting in personal injury and damages, but not death, to an individual employed thereon.

4. If the answer to the foregoing question No. 3 is in the affirmative, whether a separate trial on the issue of laches is required in order for respondent to establish and prove excusable delay in the filing of his complaint more than one year after the alleged accident and for petitioner to be able to show prejudice as a result thereof.

STATEMENT

Respondent sued petitioner (A. 1) for personal injuries allegedly sustained on the latter's fixed and immobile artificial island drilling structure off the Louisiana coast (A. 114, 128, 129, 142 and 143), while in the course and scope of his employment by the independent contractor Otis Engineering Corporation (A. 160-163, 165-172).

Upon completion of discovery and subsequent to the initial pre-trial conference,

a motion for summary judgment was asserted by petitioner (A. 113) against respondent under the provisions of LSA-C.C. article 3536, on the grounds that any and all of his claims against this defendant were perempted, prescribed and time-barred inasmuch as the complaint was filed more than 24 months after the date of the alleged accident. The United States District Court on July 23, 1969 granted a summary judgment to petitioner (A. 152) relying on Rodrigue, et al. versus Aetna Casualty and Surety Company, et al., 395 U.S. 352 (1969), after which an appeal was taken by respondent to the United States Court of Appeals for the Fifth Circuit (A. 154).

In reversing the United States District Court, the United States Court of Appeals for the Fifth Circuit held in its July 14, 1970 opinion (A. 194) that notwithstanding the contrary holding in Rodrigue, supra, the admiralty and general maritime law doctrine of laches was applicable to the alleged accident of respondent occurring on petitioner's fixed and immobile artificial island drilling structure and remanded the case for a trial on the merits. A petition for rehearing was timely filed, but promptly denied, without opinion, on August 10, 1970.

ARGUMENT

- 1- THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT HAS DECIDED A QUESTION OF LAW IN CONFLICT WITH THE APPLICABLE DECISION OF THIS COURT IN RODRIGUE, SUPRA.

It is undisputed and the evidence clearly established that at all times pertinent to the allegations of the complaint, respondent worked in the course and scope of his

employment by and under the control, direction and supervision of the independent contractor, Otis Engineering Corporation, on petitioner's fixed and immobile artificial island drilling structure off the Louisiana coast. Moreover, the affirmative allegations of respondent in the complaint, which was filed January 4, 1968, clearly and unequivocally show that the cause of action, if any, arose out of a December 17, 1965 injury.

Because of these uncontroverted facts, the United States District Court properly dismissed the complaint inasmuch as there was no genuine issue as to any material fact and petitioner was entitled to summary judgment as a matter of law. This Court recently considered and reviewed the applicable laws to such "artificial island drilling rigs located on the outer Continental Shelf off the Louisiana coast," in Rodrigue, et al. versus Aetna Casualty and Surety Company, et al., supra, and beginning at page 355, stated:

"In light of the principles of traditional admiralty law, the Seas Act, and the Lands Act, we hold that petitioners' remedy is under the Lands Act and Louisiana law. The Lands Act makes it clear that federal law, supplemented by state law of the adjacent State, is to be applied to these artificial islands as though they were federal enclaves in an upland State. This approach was deliberately taken in lieu of treating the structures as vessels, to which admiralty law supplemented by the law of the jurisdiction of the vessel's owner would apply. *The Hamilton*, 207 U.S. 398 (1907). This was

done in part because men working on these islands are closely tied to the adjacent State, to which they often commute and on which their families live, unlike transitory seamen to whom a more generalized admiralty law is appropriate. Since the Seas Act does not apply of its own force under admiralty principles, and since the Lands Act deliberately eschewed the application of admiralty principles to these novel structures, Louisiana law is not ousted by the Seas Act, and under the Lands Act it is made applicable. (Emphasis added).

The purpose of the Outer Continental Shelf Lands Act was to define a body of law applicable to the seabed, the subsoil, and the fixed structures such as those in question here on the outer Continental Shelf. That this law was to be federal law and then only when not inconsistent with applicable federal law, is made clear by the language of the Act."

Accordingly, the substantive law of the State of Louisiana was applicable to respondent's claims arising out of his alleged injury on petitioner's fixed and immobile artificial island drilling structure. In this connection, LSA-C.C. article 3536 was controlling, as well as the provisions of LSA-C.C. article 2315, wherein the right to recover against a tort-feasor must be exercised by a claimant within one year.¹

¹ Bounds versus T.L. James & Co., 124 F. Supp. 563 (1954); Tapp versus Guaranty
(continued on next page)

Such limitation of action is a period of peremption² and the Supreme Court of Louisiana in Guillory versus Avoyelles Ry Co., 104 La. 11 (1900), on page 15, ruled:

"When a statute creates a right of action and stipulates a delay within which the right is to be executed, the delay thus fixed is not, properly speaking, one of prescription, but is one of peremption. Statutes of prescription simply bar the remedy. Statutes of peremption destroy the cause of action itself. That is to say, after the limit of time expires the cause of action no longer exists; it is lost."

In Mejia, supra, the United States Court of Appeals for the Fifth Circuit was called upon to interpret the application of LSA-C.C. articles 2315 and 3536 in a tort action. Therein, on page 688, it was held:

"The only statute in the state of Louisiana providing for damages for death is Article 2315 of the Civil Code of that state, as amended

Finance Co., 158 So.2d 228 (1964); and, Gaston versus B.F.Walker, Inc., 400 F. 2d 671 (1968).

2/ Mejia versus U.S., 152 F.2d 686 (1946); Lafarque versus Samuel, 367 F.2d 396 (1966); and, Gaston versus B.F.Walker, Inc., 400 F.2d 671 (1968).

which creates such rights, but which limits its life to the space of one year from the death.³ The one-year limit of Article 2315 is not in the nature of a limitation but it is a peremption, and, unless the right created by the Article is exercised within the one-year period, it ceases to exist and is completely lost.⁴

3/ 2315 (2294) (N 1382). Torts-Liability-Survival of action.- Every act whatever of man that causes damage to another obliges him by whose fault it happened to repair it; ----.

4/ Goodwin versus Bodcaw Lumber Co., 109 La. 1050, 1066, 34 So. 74, 80; Thompson versus Gallien, 5th Cir., 127 F.2d 664."

Simply stated, respondent in his complaint untimely asserted and sought certain rights granted by LSA-C.C. article 2315, which were controlled by LSA-C.C. article 3536. The question was whether or not he exercised his rights strictly in accordance with this law. He did not and his rights, if any, are now perempted, prescribed and time-barred.

In effect, respondent suggested that because of ignorance of the law, he should be excused for the delays and procrastination in asserting his rights. Of course, this is contrary to the jurisprudence of Louisiana wherein it is quite clear that such an error

of law affords no relief.³ This is true even in the case where plaintiff engaged and relied upon the advices of his attorney.⁴

Historically, the substantive law of Louisiana has always allowed an injured party the period of one year within which to seek redress against an alleged tort-feasor. Black's Law Dictionary, Third Edition, on page 1672, describes substantive law, as follows:

"That part of the law which the Courts are established to administer, as opposed to the rules according to which the substantive law itself is administered. That part of the law which creates, defines, and regulates rights, as opposed to adjective or remedial law, which prescribes the method of enforcing rights or obtaining redress for their invasion.-----".

In this connection, LSA-C.C. article 2315 dates back more than 150 years to the Civil Code of 1808 and to the Code Napoleon of 1804. Moreover, LSA-C.C. article 3536 in substance originated in the Civil Code of 1825 and neither were in any manner whatsoever affected nor changed by Rodrigue, supra.

3/ LSA-C.C. article 7.

Oglesby versus Attrill, 105 U.S. 605 (1882); Russ versus Union Oil Company, 113 La. 196 (1904); Brewster versus J.C. Byram & Co., Inc., 149 So. 118 (1933); Adle, et al. versus Prudhomme, 16 La. Ann. 343 (1861); and, Ackerman versus McShane, 43 La. Ann. 507 (1891).

4/ McMurray versus Orleans Parish School Board,
(continued on next page)

This then cannot be conscientiously urged as a "complete change in the law," as suggested below by respondent.

- 2- THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT HAS DECIDED IMPORTANT QUESTIONS OF LAW WHICH HAVE NOT BEEN, BUT SHOULD BE, SETTLED BY THIS COURT.

In Rodrigue, supra, this Court, on page 365, after a lengthy discussion about the inapplicability of the admiralty and general maritime law to this type of an artificial island drilling structure, unequivocally ruled:

"In view of all this, and the disclosure by Senator Cordon to the Senate upon introduction of the bill that the admiralty or maritime approach of the original bill had been abandoned, it is apparent that the Congress decided that these artificial islands, though surrounded by the high seas, were not themselves to be considered within maritime jurisdiction. Thus the admiralty action under the Seas Act no more applies to these accidents actually occurring on the islands that it would to accidents occurring in an upland federal enclave or on a natural island to which admiralty jurisdiction had not been specifically extended. At a minimum,

179 So. 834 (1938); and, Arrington versus Grant Parish School Board, 130 So.2d 443 (1961).

the legislative history shows that accidents on these structures, which under maritime principles would be no more under maritime jurisdiction than accidents on a wharf located above navigable waters, were not changed in character by the Lands. Act."

The United States Court of Appeals for the Fifth Circuit clearly erred in failing to apply this well defined principle of law. Otherwise, as a result of the erroneous July 14, 1970 opinion, two separate laws are applicable in accidents occurring on fixed and immobile artificial island drilling structures. If the occurrence results in death to an individual, under the holding in Rodrigue, supra, the provisions of the laws of Louisiana are available; but, if only personal injuries are involved, then the admiralty and general maritime law shall control.

Further error was committed by the United States Court of Appeals for the Fifth Circuit in the conclusion contained in the July 14, 1970 opinion on page 13 (A. 206) wherein it was held.

"---. The doctrine of laches applies. Here, there being no question of adequate actual notice, complete lack of any prejudice, and a forthright failure to urge laches, Delgado v. Malula, 5 Cir., 1961, 291 F.2d 420, 1961 A.M.C. 1706, the suit was timely filed."

In the United States District Court, the only issue presented and resolved by the judgment was that of prescription and peremption under the laws of Louisiana. The issue as to

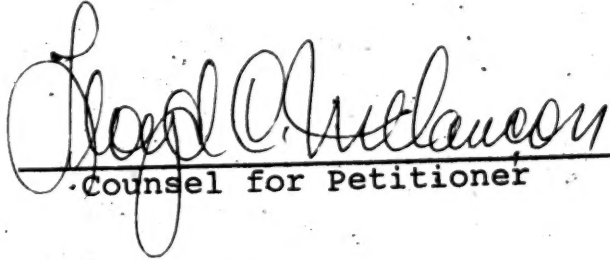
the possible application of the doctrine of laches under the admiralty and general maritime law was not argued or for that matter even presented, and a separate trial is required thereon. Costello versus United States, 365 U.S. 265 (1961); Vega versus The Malula, 291 F.2d 415 (1961); Delgado versus The Malula, 291 F.2d 420 (1961); Fidelity & Casualty Co. of N.Y. versus C/B Mr. Kim, 345 F.2d 45 (1965); Akers versus State Marine Lines, Inc., 344 F.2d 217 (1965); and, Giddens versus Isbrandsten Co., 355 F.2d 125 (1966). Obviously, if the admiralty and general maritime law doctrine of laches is ultimately held to be controlling, petitioner is entitled to its day in Court on this issue wherein a separate trial respondent must establish and prove excusable neglect in failing to file his cause of action within the one-year period and petitioner allowed to show prejudice as a result thereof.

CONCLUSION

It is respectfully submitted that the July 14, 1970 opinion of the United States Court of Appeals for the Fifth Circuit in No. 28,448 must be reversed and the July 23, 1969 judgment of the District Court of the United States, Eastern District of Louisiana, New Orleans Division, Civil Action No. 68-19D, affirmed and reinstated; and, in the alternative, should this Court determine that the admiralty and general maritime law doctrine of laches is applicable to respondent's alleged accident, a separate trial on this issue must be ordered for respondent to establish and prove excusable delay in the filing of his complaint and petitioner allowed to

show prejudice as a result thereof.

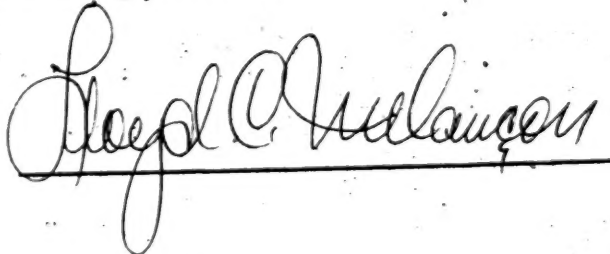
New Orleans, Louisiana, July 14, 1971.


Counsel for Petitioner

MESSRS. McLOUGHLIN, BARRANGER,
PROVOSTY AND MELANCON
Of Counsel

PROOF OF SERVICE

In furtherance of the Rules, I have served three copies of the above and foregoing brief on the merits upon all parties, by prepaid mail addressed to their counsel this 14th day of July, 1971.


Counsel for Petitioner